



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904  
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July 26, 2019

Corinna Getchell  
Office of Health Facilities Licensing and Certification  
Division of Health Care Quality  
261 Chapman Road, Suite 200  
Newark, Delaware 19702

**RE: DHSS/DHCQ Proposed Regulations Governing Free Standing Emergency Departments  
Regulation [23 DE Reg. 9 (July 1, 2019)]**

Dear Ms. Getchell:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) proposed regulations governing Free Standing Emergency Departments. Council would like to share the following observations.

First, in Section 2.0 on Definitions c. Emotional Abuse, Council would ask that DHSS consider changing "...within hearing distance..." to "...within normal hearing distance..." since hearing distance may be different for each individual.

Second, also in Section 2.0, the definition of "Serious Injury" contains three references to serious injury (serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ). Council would suggest defining or providing more information to define serious as it is used in this definition.

Third, Section 2, definition of Substantial Compliance would benefit from a definition or description of 'minimal'. Council would suggest using another term.

Fourth, section 3.2.1.6, Council queries whether it would be clearer to simply require a background check.

Fifth, 3.3.3.1 and 3.3.3.2 appear to be saying the same thing. Council would suggest merging the two.

Sixth, 3.3.3.4 appears to violate 3.3.3.5 since compliance cannot be determined without an inspection.

Seventh, in section 3.4.4.3, no timeline is mentioned for the hearing to be held.

Eighth, section 3.10 mentions a fine of not less than \$100.00 for violating these regulations. This is not even as much as a ticket for a traffic violation. Council would suggest a more substantial fee.

Ninth, §§4.15 and 4.17.5 discuss compliance with federal, state and local laws; although it does not specifically mention the Americans with Disabilities Act of 1990 (ADA) or Section 504 of the Rehabilitation Act of 1973 (Section 504). The ADA requires access to medical care services and the facilities where the services are provided. Private FSEDs are covered by Title III of the ADA. Section 504 covers any FSED that received federal financial assistance (including Medicare and Medicaid reimbursements). It would be better if the regulation specifically mentioned that the FSED must comply with the ADA and Section 504, so that its application to persons with disabilities would be readily apparent and not simply inferred. Council does appreciate the incorporation of the 2018 Facility Guidelines Institute (FGI) Guidelines for Design and Construction of Health Care Facilities in §4.17 since these guidelines provide design standards for a variety of medical services facilities, including FSEDs.

Tenth, section 4.20.4 and 4.20.5 provide information on reporting incidents and investigation reporting. However, there is no discussion on what happens after reports are submitted. Council would suggest adding information on the steps that are taken after the investigation report to include review by the Department and appropriate actions being taken following the investigation.

Eleventh, section 5.2.9 may have a word in the incorrect placement. Suggest the sentence read as follows: “Ensuring that the physical environment protects the health and safety of patients, personnel and the public.”

Twelfth, section 6.1.1 mentions that the Director has to be a full-time physician but does not mention that the director has to be a full time physician in Delaware, certified by the Delaware Board. The description is a little vague.

Thirteenth, section 6.4.2.14, Council would suggest changing the word ‘handling’ so that it reads as follows: The investigation and documentation of incidents, accidents and major adverse incidents.”

Fourteenth, section 8.6 states that reportable diseases shall be reported to the Division of Public Health. Does the public have access to any of this information?

Fifteenth, section 9.6 states “The Department may review...” Council would suggest changing ‘may’ to ‘must review...’

Sixteenth, section 10.3.2 states that treatment areas are thoroughly cleaned after each use. This is admirable if it really occurs.

Seventeenth, section 10.3.6 outlines how blood spills are to be cleaned but there is no mention of receptacles for materials used to clean up blood spills or other hazardous materials.

Eighteenth, section 15.0 makes preparation of a written disaster preparedness plan for dealing with medical and non-medical emergencies mandatory. The plan must take into account the patient population served, including persons with disabilities. However, there is no specific language setting forth any requirements for dealing with patients with disabilities during an emergency. Also, the regulation requires the FSED to comply with the rules and regulations of the Fire Prevention Commission and be inspected annually by the fire marshal; however, there is no specific language dealing with how patients with disabilities would be evacuated. Further, the regulation does not require that employees receive training in procedures to be followed for patients with disabilities. The regulation could be improved by including requirements that specified an evacuation route for patients with disabilities, including the width of any route and removal of any obstructions.

Thank you for your consideration of our comments. Please contact me or Wendy Strauss at the GACEC office if you have any questions on our observations.

Sincerely,

*Ann C Fisher*

Ann C. Fisher  
Chairperson

ACF: kpc